

## PART I. ADMINISTRATION OF THE GOVERNMENT

### TITLE XIX. AGRICULTURE AND CONSERVATION

#### CHAPTER 132A. STATE RECREATION AREAS OUTSIDE OF THE METROPOLITAN PARKS DISTRICT

[ As modified by an Act Relative to Oceans (2008) ]

##### Chapter 132A: Section 12A. Massachusetts Ocean Sanctuaries Act

Section 12A. Sections twelve B to sixteen E, inclusive, and section eighteen shall be known and may be cited as the Massachusetts Ocean Sanctuaries Act.

##### Chapter 132A: Section 12B. Definitions

Section 12B. As used in sections twelve A to eighteen, inclusive, the following words shall have the following meanings:

“Act”, the Massachusetts Ocean Sanctuaries Act.

“Adjudicatory hearing”, a hearing conducted pursuant to sections nine, ten, ten A, eleven and twelve of chapter thirty A.

“Applicant”, any city, town, district, county or authority which has the legal ability to implement alternative forms of wastewater disposal, including land application, and which applies for a variance pursuant to the Act.

“Coastal embayment”, coastal or marine waters that have a restricted opening to the ocean due at least in part to the formation of a barrier beach.

“Director “, the director of coastal zone management.

“Environmental impact report”, an environmental impact report prepared pursuant to the Massachusetts Environmental Policy Act, sections sixty-one to sixty-two H, inclusive, of chapter thirty.

**Deleted:** “Commissioner”, the commissioner of the department of environmental management. ¶  
“Department”, the department of environmental management. ¶

“Estuary”, a semi-enclosed body of water which has a free connection with the open sea, within which sea water is measurably diluted with fresh water derived from outflowing fresh water rivers.

“Existing discharge”, a municipal, commercial or industrial discharge at the volume and locations authorized by the appropriate federal and state agencies on July fifteenth, nineteen hundred and seventy, in the case of the Cape Cod Ocean Sanctuary; on December eighth, nineteen hundred and seventy-one, in the case of the Cape Cod Bay and Cape and Islands Ocean Sanctuary; on June twenty-seventh, nineteen hundred and seventy-two in the case of the North

Shore Ocean Sanctuary; and on December thirtieth, nineteen hundred and seventy-six, in the case of the South Essex Ocean Sanctuary.

“Facilities plan”, a plan which satisfies the planning requirements applicable to applicants for federal grants for the construction of publicly owned wastewater treatment works, as determined by the division of water pollution control.

“Office”, office of coastal zone management.

“Person”, any agency or political subdivision of the federal government or the commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee or agent of said person, and any group of said persons.

“Proposed discharge”, an increase in volume or change in location of an existing discharge from a publicly owned treatment plant or combined sewer system.

“Publicly owned treatment plant”, a sewage or septage treatment plant owned by a public entity.

#### **Chapter 132A: Section 12C. Regulations; integration of act with other programs**

Section 12C. The ~~office~~ shall promulgate such regulations as it deems necessary for the implementation, administration and enforcement of the act. The ~~office~~ shall integrate its implementation, administration and enforcement of the act with other programs for the protection of the public health, safety, welfare and the environment.

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#### **Chapter 132A: Section 13. Ocean and bay sanctuaries; Cape Cod, Cape Cod Bay, Cape and Islands, North Shore, South Essex; landward boundaries**

Section 13. There are hereby established the following ocean sanctuaries:

(a) The Cape Cod Ocean Sanctuary is described as follows: Beginning at a point three miles west of the mean low-water line along the Bay Closing Line between Brant Rock in the town of Marshfield and Race Point in Provincetown as established on the Marine Boundary Map of the Commonwealth (prepared by the Department of Public Works, Division of Waterways, December, 1971, pursuant to Chapter 810 of the Acts of 1970 and Chapter 1035 of the Acts of 1971); thence swinging in a clockwise arc along a line three miles offshore and parallel to the mean low-water line of the northerly extremity of Cape Cod to the point of intersection with the Exterior Line of the Commonwealth as established on the aforementioned Marine Boundary Map; thence in a generally easterly and then southerly direction along said Exterior Line to the intersection with a line running due east (50 Degrees True) from a point three miles due south (180 Degrees True) of the mean low-water line at the southernmost point of Monomoy Point in the town of Chatham; thence westerly on said line to the point three miles due south (180 Degrees True) of the mean low-water line of the southernmost point of Monomoy Point; thence running due north (0 Degrees True) to the mean low-water line at Monomoy Point; thence along the mean low-water line of the eastern side of Monomoy Island and thence by the shortest

distance to the seaward boundary of the Cape Cod National Seashore, as established by Act of Congress (1961, P.L. 87-126); thence easterly, northerly, westerly, and finally southwesterly along the seaward boundary of said Cape Cod National Seashore to the point of intersection with the aforementioned closing line, then westerly along said closing line to the point of beginning; and meaning and intending to include Town Cove and Nauset Harbor and portions of the Atlantic Ocean.

(b) The Cape Cod Bay Ocean Sanctuary is bounded and described as follows: That body of water known as Cape Cod Bay and lying southerly of the Bay Closing Line between Brant Rock in the Town of Marshfield and Race Point in the town of Provincetown as established on the aforementioned Marine Boundary Map of the Commonwealth, and lying seaward of the mean low-water line; meaning and intending to include: all of that water area and seabed lying in a southerly direction from the aforementioned closing line; all of Provincetown Harbor including portions which may be easterly or northerly of the aforementioned closing line, Wellfleet, Plymouth, and Barnstable Harbors; Plymouth, Kingston, and Duxbury Bays; and the Cape Cod Canal Northerly of the Bourne-Sandwich town boundary, and excluding the water area and seabed of the Cape Cod National Seashore as established by Act on Congress (1961, P.L. 87-126).

(c) The Cape and Islands Ocean Sanctuary is bounded and described as follows: Beginning at a point on the mean low-water line at the southernmost point of Monomoy Point; thence due south to a point in the Atlantic Ocean three miles due south (180 Degrees True) of the mean low-water line at the southernmost point of Monomoy Point; thence due east (90 Degrees True) to the Exterior Line of the Boundary of the Commonwealth as established on the aforementioned Marine Boundary Map; thence in a generally southerly and then westerly direction along said Exterior Line to the point of intersection with the extension of the lateral boundary of Rhode Island and Massachusetts; thence northerly along said lateral boundary to the mean low-water line near Quicksand Point; thence following the mean low-water line around Buzzards Bay, the Cape Cod Canal to the Bourne-Sandwich town boundary, and the southern portion of Cape Cod to the point of intersection in Pleasant Bay with the western boundary of the Cape Cod National Seashore; thence southerly along said boundary; thence by the shortest distance to the mean low-water line of Monomoy Island; thence to the point beginning by following the mean low-water line of the western side of Monomoy Island; and meaning and intending to include the area seaward of the mean low-water lines of Nantucket, Martha's Vineyard, Elizabeth and other islands; and meaning and intending to include the following bodies of water: Nantucket Sound, Vineyard Sound, Buzzards Bay, the Cape Cod Canal, Pleasant Bay, and portions of the Atlantic Ocean.

(d) The North Shore Ocean Sanctuary is bounded and described as follows: Beginning at the mean low-water line at the southeasternmost point of Pickworth Point in the town of Manchester-by-the-Sea; thence by a line bearing (150 Degrees True) (South-southeasterly) seaward to a distance of three miles to a point (42 Degrees 31.13" north, 70 Degrees 43.87" west); thence due east (90 Degrees True) to the point of intersection (42 Degrees 31.13" north, 70 Degrees 36.70" west) with the Exterior Line of the Marine Boundary of the Commonwealth as established on the aforementioned Marine Boundary Map; thence northerly, northeasterly, northwesterly, westerly, southwesterly, and northerly along said Exterior Line to the point of

intersection with the extension of the lateral boundary of New Hampshire and Massachusetts; thence westerly along said lateral boundary to the line of mean low-water; thence southerly, northeasterly, southeasterly, southerly, and southwesterly, along the line of mean low-water to the point of place of beginning; and meaning and intending to include Gloucester Harbor; Ipswich and Essex Bays; Plum Island Sound; the Merrimack River Estuary; and portions of the Atlantic Ocean.

(e) The South Essex Ocean Sanctuary is bounded and described as follows: Beginning at the mean low-water line at the southeasternmost point of Pickworth Point in the town of Manchester-by-the-Sea; thence by a line bearing (150 Degrees True) (South-southeasterly) seaward to a distance of three miles to a point (42 Degrees 31.13" north, 70 Degrees 43.87" west) thence due east (90 Degrees True) to the point of intersection (42 Degrees 31.13" north, 70 Degrees 36.70" west) with the Exterior Line of the Boundary of the Commonwealth as established on the aforementioned Marine Boundary Map; thence southerly along said Exterior Line to a point (42 Degrees 26.10" north, 70 Degrees 38.42" west) thence due west (270 Degrees True) along a line a point (42 Degrees 26.10" north, 70 Degrees 52.02" west) which is three miles from the mean low-water line on a line which is the extension of the boundary line between the city of Lynn and the town of Swampscott thence northwesterly along said boundary extension to the mean low-water line; thence easterly, northeasterly, northwesterly, southwesterly, northeasterly, northwesterly, and northeasterly along the line of line of mean low-water of the commonwealth to the point or place of beginning; and meaning and intending to include Marblehead Harbor, Salem Harbor, Beverly Harbor, Salem Sound, Manchester Bay, and parts of Massachusetts Bay.

"Miles", as used in this section, means nautical miles. "Mean low-water line" shall mean the arithmetic mean of the low-water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch) and shall be determined using the nautical charts, harbors charts series (1:50,000 and larger) prepared by the National Ocean Survey, U.S. Department of Commerce. For those coastal areas not covered by such published harbor charts, the mean low-water line shall be determined using hydrographic survey data obtainable from the National Ocean Survey. Save for the degree bearings given herein, the compass directions provided in this act are general approximations of the directions of the boundaries of the sanctuaries; in all cases the mean low-water line shall follow the mean low-water line as determined from said charts or data, however it may wend or meander. Such Ocean Sanctuaries shall include all islands lying within the aforescribed boundaries seaward of the mean low-water lines of each such island.

Notwithstanding the foregoing, the landward boundary of each ocean sanctuary shall be seaward of the mean low-water line in all rivers, bays, harbors, and coves at the point where the distance between the mean low water lines on either side is two hundred yards or less. The department shall have the regulatory authority to change from time to time the landward boundary of an ocean sanctuary to extend inward in rivers, bays, harbors, or coves to include environmentally sensitive areas. Such changes shall be reflected on the official ocean sanctuaries map.

## Chapter 132A: Section 14. Care, control, and protection of sanctuaries

Section 14. All ocean sanctuaries as described in section thirteen shall be under the care, oversight and control of the ~~office~~ and shall be protected from any exploitation, development, or activity that would significantly alter or otherwise endanger the ecology or the appearance of the ocean, the seabed, or subsoil thereof, or the Cape Cod National Seashore.

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## Chapter 132A: Section 15. Prohibited activities in ocean sanctuaries

Section 15. Except as otherwise provided in this section, the following activities shall be prohibited in an ocean sanctuary:

- (1) the building of any structure on the seabed or under the subsoil;
- (2) the construction or operation of offshore or floating electric generating stations, except:
  - (a) on an emergency and temporary basis for the supply of energy when the electric generating station is otherwise consistent with an ocean management plan; or
  - (b) for appropriate scale renewable energy facilities, as defined by an ocean management plan promulgated pursuant to section 4C of chapter 21A, in areas other than the Cape Cod Ocean Sanctuary; provided, however, that
    - (i) the renewable energy facility is otherwise consistent with an ocean management plan;
    - (ii) siting of all such facilities shall take into account all relevant factors, including but not limited to, protection of the public trust, compatibility with existing uses, proximity to the shoreline, appropriateness of technology and scale, environmental protection, public safety and community benefit; and (iii) in regions where regional planning agencies have regulatory authority, a regional planning agency may review the appropriate-scale offshore renewable energy facilities as developments of regional impact and the applicant may seek review pursuant to the authority of the energy facilities siting board to issue certificates of environmental impact and public interest pursuant to sections 69K through 60O of chapter 164;
- (3) the drilling or removal of any sand, gravel or other minerals, gases or oils;
- (4) the dumping or discharge of commercial, municipal, domestic or industrial wastes;
- (5) commercial advertising;
- (6) the incineration of solid waste or refuse on, or in, vessels moored or afloat within the boundaries of an ocean sanctuary.

## Chapter 132A: Section 16. Permitted activities in ocean sanctuaries

Section 16. Nothing in this act is intended to prohibit the following activities, uses or facilities: In all ocean sanctuaries except the Cape Cod Ocean Sanctuary the planning, construction, reconstruction, operation and maintenance of industrial liquid coolant discharge and intake systems and all other activities, uses and facilities associated with the generation, transmission, and distribution of electrical power, provided that all certificates, licenses, permits and approvals required by law are obtained therefor, and provided, further, that such activities, uses and

Deleted: Section 15. Except as otherwise provided herein, the following activities shall be prohibited in an ocean sanctuary: the building of any structure on the seabed or under the subsoil; the construction or operation of offshore or floating electric generating stations, the drilling or removal of any sand, gravel or other minerals, gases or oils; the dumping or discharge of commercial, municipal, domestic or industrial wastes; commercial advertising; the incineration of solid waste or refuse on, or in, vessels moored or afloat within the boundaries of an ocean sanctuary. ¶

facilities shall not be undertaken or located except in compliance with any applicable general or special statutes, rules, regulations or orders lawfully promulgated; the operation and maintenance of existing municipal, commercial or industrial facilities and discharges where such discharges or facilities have been approved and licensed by appropriate federal and state agencies; the laying of cables approved by the department of [public utilities or the department of telecommunications and cable](#); channel and shore protection projects, navigation aids, projects authorized under chapter ninety-one, deemed to be of public necessity and convenience, contingent upon obtaining the required approval wherever applicable by the United States Army Corps of Engineers, the division of water pollution control, the department of environmental protection, or the [office](#); other improvements not specifically prohibited by said sections twelve B to sixteen F, inclusive, and said section eighteen which are approved by appropriate federal and state agencies and which are consistent with said sections twelve B to sixteen F, inclusive, and said section eighteen, including the maintenance and repair of existing structures or uses, but not any change or extension of such structures or uses unless otherwise permitted by said sections twelve B to sixteen F, inclusive, and said section eighteen; the harvesting and propagation of fish and shellfish in all forms, so long as the [office](#) and the department of [fish and game](#) are satisfied that such activities are carried on in accordance with sound conservation practices; temporary educational and scientific activities jointly permitted by appropriate state agencies; and the extraction of sand and gravel from the seabed and subsoil of a sanctuary for the purposes of shore protection or beach restoration, provided, however, that such shore protection or beach restoration is approved by the department of environmental protection.

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Except in the Cape and Islands Ocean Sanctuary, the Cape Cod Ocean Sanctuary, and the Cape Cod Bay Ocean Sanctuary, nothing in this act is intended to prohibit municipal wastewater treatment discharges and municipal wastewater treatment facilities if such discharge into the ocean sanctuary is the only feasible alternative to existing water pollution problems if it is consistent with the intention and purposes of this chapter, and it is approved and licensed by appropriate federal and state agencies. In the North Shore Ocean Sanctuary, discharges shall be permitted from municipal waste treatment facilities if construction is commenced prior to January first, nineteen hundred and seventy-eight or if a city or town has been awarded a federal or state grant for construction of a wastewater treatment facility prior to January first, nineteen hundred and seventy-eight, if the waste has been treated by the best practical means, if such a discharge is in accordance with plans developed under the provisions of clause (10) of section twenty-seven of chapter twenty-one, and such plans are subject to the approval of the division of water pollution control after a public hearing conducted by said division.

#### **Chapter 132A: Section 16A. Municipal wastes; discharge into ocean sanctuaries; variance**

Section 16A. In cases where the prohibition in section fifteen against discharges of municipal wastes into the ocean sanctuaries may not further the purposes of the act, such discharges may be allowed; provided, however, that a suitable quality of effluent is achieved to protect the appearance, ecology, and marine resources of the sanctuary; and, provided further that the department of [environmental protection](#), in its discretion, upon application, grants a variance from the prohibitions of said section fifteen for the proposed discharges, subject to the provisions of sections sixteen B to sixteen F, inclusive.

## **Chapter 132A: Section 16B. Municipal wastes; discharge into ocean sanctuaries; variance; prerequisites**

Section 16B. A variance under the provisions of section sixteen A may be granted only when the following prerequisites are met:—

- (1) The proposed discharge is the only feasible alternative, based upon technical, economic, environmental and public health factors.
- (2) The proposed discharge shall be consistent with the intent and purpose the Act. Any discharge must be able to meet the water quality standards and the standards of the Act to protect the appearance, ecology and marine resources of the waters of the sanctuary.
- (3) The applicant shall have adopted and implemented a plan approved by the department of environmental protection requiring the pretreatment of all commercial and industrial wastes discharged to the municipal wastewater treatment system.
- (4) The applicant shall have adopted and implemented a program for water conservation according to the guidelines established by the water resources commission.
- (5) The applicant shall have adopted and implemented a plan, approved by the department of environmental protection, to control inflow and infiltration.
- (6) The applicant shall have adopted and implemented a plan, approved by the department of environmental protection, to control any combined sewer overflows.
- (7) The applicant shall have adopted and implemented a plan to review and control growth and connections to the municipal wastewater treatment system and treatment works so as to ensure that design and treatment capacity are not exceeded. The plan shall require notification to the department of environmental protection whenever average flows within the system for any quarter equal or exceed eighty percent of the design capacity of the treatment plant. At that time, the applicant shall initiate the design and construction of additional treatment capacity, or other appropriate measures. The department of environmental protection shall take appropriate action to ensure that the design capacity of the treatment plant is not exceeded.

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- (8) The proposed discharge will not significantly affect the quality or quantity of existing or proposed water supplies by reducing ground or surface water replenishment.
- (9) The proposed discharge must be treated to a secondary level, and such other treatment to remove nutrients or other pollutants which is found to be necessary to avoid degradation of the ecology, appearance and marine resources of the designated sanctuary and to meet water quality standards.
- (10) The proposed discharge is consistent with the policies of the Massachusetts coastal zone management program.

(11) The proposed discharge and treatment plant are consistent with all applicable federal, state, and local laws, ordinances, by-laws, rules and regulations protecting the environment, including but not limited to the requirements of chapters twenty-one, ninety-one, one hundred and thirty, and one hundred and thirty-one.

(12) The proposed discharge and outfall structure will not adversely impact marine fisheries or interfere with fishing grounds or the normal operation of fishing vessels.

**Chapter 132A: Section 16C. Municipal wastes; discharge into estuaries, coastal embayments or land subject to tidal action; variance**

Section 16C. No variance approved by the department of environmental protection may authorize a discharge into an estuary or coastal embayment or a discharge which will have a significant adverse effect upon an estuary, a coastal embayment, or land subject to tidal action. Any variance approved by the department of environmental protection shall require the applicant to eliminate all discharges into estuaries and coastal embayments from publicly owned treatment works under control of the applicant. Nothing in this section shall be construed to prohibit discharges within estuaries or coastal embayments from facilities designed to abate existing discharges exclusively from combined sewer overflows, where such facilities have been approved by the division of water pollution control, and where such existing discharges from combined sewer overflows degrade or threaten to degrade the designated ocean sanctuary nor is anything in this Act intended to alter the effect of the previous exemptions found at chapter one hundred and twenty of the acts of nineteen hundred and eighty-one and chapter three hundred and sixty-nine of the acts of nineteen hundred and eighty-four.

The seaward boundary of the Plymouth - Kingston Duxbury coastal embayment shall be a line between Gurnet Point and Rocky Point, provided, however, that no discharge may be authorized in a depth of water which at mean low tide is less than thirty feet.

**Chapter 132A: Section 16D. Municipal wastes; discharge into ocean sanctuaries; variance; application requirements**

Section 16D. An application for a variance shall satisfy the following minimum requirements:

- (1) The application shall include a final facilities plan approved by the division of water pollution control, and a final environmental impact report.
- (2) The application shall include an evaluation of alternatives, including land disposal.
- (3) The application shall demonstrate that land disposal is not a feasible alternative for all or a part of the discharge.
- (4) The application shall demonstrate how the applicant satisfies all requirements of section sixteen B.



## **Chapter 132A: Section 16E. Variance applications; notice; hearings; decisions; effective date**

Section 16E. Upon receipt of an application for a variance, the department of environmental protection shall provide public notice, an opportunity for comment, and shall hold a public hearing on the application. Individual notice shall be provided to all municipalities bordering the affected sanctuary. Following the public hearing, the department of environmental protection shall prepare a proposed final decision and provide public notice thereof, including individual notice to any person commenting on the application and to all municipalities bordering the affected sanctuary. The proposed final decision shall take effect within thirty days of the public notice unless any person aggrieved by the decision requests an adjudicatory hearing prior to the expiration of the thirty days. In any adjudicatory hearing, the applicant shall have the burden of proving that the proposed discharge satisfies the requirements of section sixteen B. Following an adjudicatory hearing, the commissioner shall make the final decision and provide notice to all parties. The final decision shall take effect within thirty days, unless an appeal is taken pursuant to section fourteen of chapter thirty A prior to the expiration of the thirty days.

## **Chapter 132A: Section 16F. Variance conditions; enforcement**

Section 16F. Any condition adopted by the department in approving a variance shall become a condition of the discharge permit issued by the division of water pollution control pursuant to chapter twenty-one. The department of environmental protection shall have authority equivalent to that provided by sections forty-five to forty-six A, inclusive, of chapter twenty-one, and by section sixteen of chapter twenty-one A, to enforce any condition established by the department in approving a variance.

## **Chapter 132A: Section 18. Permits and licenses**

Section 18. All departments, divisions, commissions, or units of the executive office of energy and environmental affairs and other affected agencies or departments of the commonwealth shall issue permits or licenses for activities or conduct their activities consistently with the act, and shall not permit or conduct any activity which is contrary to the provisions of the Act. Except as provided by sections sixteen B through sixteen F, inclusive, the Act shall not require any additional permits from the office, but other departments, divisions, commissions, units, or other agencies shall confer and consult with the office to ensure compliance with the Act. The attorney general or the appropriate state agency shall take such action as may be necessary from time to time to enforce the provisions of the Act, and the superior court shall have jurisdiction to enforce the provisions thereof.

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Any permit or license issued by a department, division, commission, or unit of the executive office of energy and environmental affairs and other affected agencies or departments of the commonwealth for activities or conduct consistent with this act shall be subject to an ocean development mitigation fee as shall be established by the secretary of the executive office of energy and environmental affairs, provided, however, that no fee shall be assessed on commercial and recreational fishing permits or licenses. All the proceeds of the ocean

development mitigation fee shall be deposited in the Ocean Resources and Waterways Trust Fund established pursuant to section 35HH of chapter 10.